

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION**

DOCKET NO. 3:04-CR-00011-W

UNITED STATES OF AMERICA)	
)	
vs.)	
)	ORDER
CHRISTOPHER BARRINGER,)	
)	
Defendant.)	
)	

THIS MATTER is before the Court on Defendant's Motion to Excuse Late Filing of Notice of Appeal (Doc. No. 38), filed January 13, 2007, and the Government's Response in Opposition to Defendant's Motion (Doc. No. 39), filed February 26, 2007. The Court entered judgment in this case on December 13, 2006. During much of December, including the day judgment was entered (December 13, 2006), defense counsel was out of the office with the flu and also moved the location of his office. As a result, he did not realize the judgment had been issued until the first week of January, which was past the deadline for noticing an appeal. Notwithstanding the fact that Defendant waived his right to an appeal, Defendant insisted that his counsel file a notice of appeal. Defense counsel filed such notice on January 10, 2007. The notice of appeal was filed outside the ten day deadline under Rule 4(b)(1)(A) of the Appellate Rules of Federal Procedure, but not in excess of thirty (30) days past this ten day deadline, which is the maximum amount the Court may extend the deadline under Rule 4(b)(4). Defendant now requests the Court to find excusable neglect pursuant to Rule 4(b)(4) and retroactively grant Defendant an extension of time to file his notice of appeal.

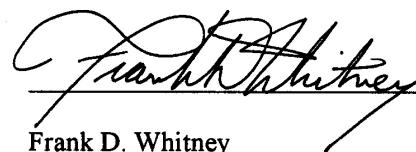
Pursuant to Rule 4(b)(4) of the Federal Rules of Appellate Procedure, the Court finds excusable neglect exists and hereby retroactively extends Defendant's deadline for filing his notice

of appeal for thirty days past the expiration of the Rule 4(b)(1) ten-day deadline, or until January 22, 2007. Therefore, the Court excuses Defendant's tardy notice of appeal, filed on January 10, 2007, and the notice is deemed timely filed.¹

IT IS, THEREFORE, ORDERED that Defendant's Motion to Excuse Late Filing of Notice of Appeal is GRANTED.

IT IS SO ORDERED.

Signed: February 27, 2007



Frank D. Whitney
United States District Judge



¹The Court acknowledges and agrees with the Government's argument that no issue is ripe for appeal. The record reflects Defendant waived his appellate rights as part of his plea agreement and during the Rule 11 plea colloquy. Nonetheless, the issue before this Court is not whether the appeal is jurisdictionally appropriate; rather, that is an issue to be determined by the Fourth Circuit.